Bell (6)

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# MADNESS AND CRIME.*

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The legal tests of responsibility of the insane, as applied under the English law, and in the American States, have given rise to grave discussion, which must interest and arouse every thoughtful legislator, in the inquiry now forced upon the public mind, which is intensified by the cases of Gouldstone and Cole in Great Britain, and of Guiteau, and similar cases here.

The medical profession may be said to substantially agree as a body, that in homicides by the insane, a knowledge of the character of the act committed, and of its being in violation of law, is not a safe and reliable test of the responsibility of the perpetrator. Indeed, medical men substantially concur that the insane, who are confessedly responsible for their acts, are, as a rule, able—not only to discriminate between right and wrong—but to comprehend, and know, that their act is in violation of law, and frequently understand its full nature and character and the legal consequences.

The legal profession has been trained to accept legal decisions, precedents, and the settled authorities, in a long line of cases, and to inquire and understand what the law really is, rather than to investigate its justice, its philosophy, or the reasons and principles upon which it is based.

* Read before the Medico-Legal Society of New York, September 24, 1884.

The inquiry of the legal and judicial mind is, what is the *lex scripta;* and so far as the judiciary are concerned they are undoubtedly bound by it, and have no discretion but to enforce by their decisions its provisions, as settled by the courts, in the current of decisions.

Both professions, and the public, are now face to face with an acknowledged vice, in the existing laws of all English speaking countries, as to the true tests of legal responsibility in cases of insanity.

We should investigate this question with courage, without prejudice, and in the light which science has brought to the solution, of much that was misunderstood and unknown, when the judges gave their answers in the celebrated case of McNaughten, in 1843, to the questions propounded by the House of Lords after the acquittal of McNaughten.

That action, which has controlled the bench on both sides the Atlantic, since that era, should be examined now by the law-making power, to see if it rests upon sound principles, and it should be discussed outside of the environment of the judges of that age, who formulated the dogma, that knowledge of right and wrong, and ability to discriminate between right and wrong, with sufficient power of intellect to enable the accused to know and understand the nature and consequences of the act at law, was the true test of responsibility in such cases.

The most careful, conscientious, humane and discreet alienists, now tell us that the insane do know that the act is wrong, often fully understand its nature and consequences, and, as a rule, can discriminate between right and wrong, in acts, which they commit under the force of insane delusions, which they are not able to resist, and which affect and often,

times control their action, and they insist that these truths must be considered in determining criminal responsibility in all these cases.

The thoughtful men of the bar must acknowledge this to be a fact. They must concede that the rule of law, as interpreted by the English and American courts in many cases, is misleading and faulty, and that the whole subject demands the careful revision of the lawmakers, and that at an early day.

The case of Gouldstone, who was tried and convicted at the September Term of the Central Criminal Court of London, 1883, before Mr. Justice Day, for the murder of his five children, illustrates fully the state of the present law in Great Britain, and the need of a speedy change in legal procedure in such cases there.

That Gouldstone was insane can not be doubted, and that fact has been found since the conviction, upon a formal inquiry directed to be made by Sir William Harcourt, the English Home Secretary, by Dr. Orange and Dr. Clarke, eminent alienists, who reported him to be insane, upon which report he was reprieved by the government.

Gouldstone drowned three of the children in the cistern and broke the skulls of the remaining two with a hammer He said to his wife: "All the children are dead now. I shall be hung and you will be single." When the policeman arrested him, he said: "I have done it. Now I am happy and ready for the rope." On his way to the station he said to the officer: "I thought of buying a revolver to do it with, but altered my mind, as I thought it would make too much noise."

"I thought it was getting too hot with five kids within

three and-a-half years, and I thought it was time to put a stop to it."

Mr. Poland, for the Crown, claimed, and truthfully, that Gouldstone knew thoroughly well what he was about, that he was fully conscious at the time that he was committing a crime against the law of the land, that he knew the nature and quality of the act he was committing, and that it was a crime, and he claimed that Gouldstone was responsible under the law for the act.

The prisoner's father swore that the prisoner's mother was deranged, and had been for years; had attempted suicide twice; that about eight weeks before the trial she had threatened to take her own life; that her sister was also deranged; that William Gouldstone, his second cousin, died n a madhouse, and that his father's sister wore a strait jacket for some years.

Charles Gouldstone, cousin of prisoner's father, deposed that his son had been confined in a lunatic asylum sixteen months, since 1880.

Dr. Sunderland, who attended prisoner's mother and her sister, described the form of insanity under which both suffered as despondency, or melancholia.

Dr. Geo. H. Savage, an eminent English alienist, principal physician at Bethlem Hospital for the Insane, who had examined the prisoner, pronounced him of unsound mind at the time the act was committed.

Dr. Savage's evidence as to his conclusions, based upon the evidence of insanity on paternal and maternal side, was excluded by the court, holding that a doctor was entitled to give his medical evidence, but not to draw a conclusion, which was the province of the jury.

Dr. Savage swore that insanity, if proved on maternal side, created a tendency to insanity in the prisoner, which would be greatly increased if insanity was proved even in a remote degree on paternal side, citing the case of the last patient at Bethlem Hospital who died—a woman who had killed her whole family—Dr. Savage, on cross-examination, swore that he had examined the prisoner only about a quarter or half an hour; that the prisoner's conversation did not indicate insanity; that he could not certify him to be a lunatic from what he had seen; and that Gouldstone spoke rationally as to the crime and understood its penalty.

That when he had said he thought the prisoner of unsound mind he based his opinion upon his examination and from what he heard in court, that he thought the prisoner knew the penalty of what he was doing at the time, and that he had killed the children, knowing the penalty for so doing was death.

Judge Day charged the jury, "that the matter of law was for the court, and the jury were bound to take its instructions with regard to the law, in doing which they would be incurring no responsibility upon themselves."

"That as matter of law if the prisoner, at the time he killed the children, knew the nature and quality of the act he was committing, and knew that he was doing wrong, then he was guilty of wilful murder."

"That the only question for them to determine was whether the prisoner knew the nature and quality of the act he was committing, and whether he knew it was wrong and in violation of law."

The Judge, under the act of Parliament passed August, 1883, charged the jury: "That if they found the prisoner

was insane at the time he committed the act, they would have to return a special verdict that he committed the act, but was insane at the time."

"If on the other hand they found that he knew the nature and quality of the act when he killed his children, and that he was not of unsound mind, they must find him guilty, and the new act of Parliament would not affect their verdict.

The verdict was "guilty of wilful murder."

This case excited great interest in England. Dr. Savage, in response to public assaults, published the following cards.

To the Editor of *The Times:*

Sir,—I feel it my duty to write shortly about the case of William Gouldstone, the murderer of his five children. Justice demands further investigation of the case. The facts are plain. A young man of 26, who had been a well-behaved and industrious man, odd in some of his ways, is seized with fear of impending ruin to himself and family, and kills them to send them to heaven. The act is an insane one, and I think little more should have been needed to prove it to be such, but it was proved that his mother and aunt both suffered from precisely similar fears of ruin, and though the Judge ridiculed the importance of a second cousin on his father's side being insane, I would repeat emphatically that there being an insane taint which could have been shown to exist in several second cousins and others on the father's side, was of great importance. A great deal was made of my statement that I could not certify to his insanity from my personal interview of 15 to 30 minutes. It does not follow that the man may not have been insane at the time the act was committed.

There is the feeling abroad that a man if insane and irresponsible is always so, whereas the most insane people often are collected enough during the greater part of their lives. The poor man Gouldstone is, to my mind, a typical case of insanity associated with insane parentage. He had done his work, which was purely mechanical, well, but he had no power to resist, and the act he perpetrated depended on an insane feeling of misery. I have no doubt he would have sooner or later developed delusions

The medical officer to the House of Detention told me he considered him to be suffering from melancholia.

I trust this prisoner will not be allowed to be hanged. I may say that I am not one who is in the habit of defending criminals on the plea of insanity.

I am, yours truly,

Geo. H. Savage, M.D.,

Physician Bethlem Hospital.

September 15, 1883.

To the Editor of *The Daily Telegraph:*

Sir,—I feel bound to take notice of the letters written to you by "One of the Jury" in this case, as there seems to be great danger that the prisoner will suffer through misunderstanding of my opinion. The skillful cross-examination of Mr. Poland gave me no opportunity of representing my own opinion on the man's sanity. I was forced to own that in a short interview, from the facts seen by myself, I could not have signed a certificate of insanity. I doubt not but that if I had expressed a willingness to sign one that the haste of the proceeding would have been used as an argument against its value.

I did say, however, that, taking my examination with the history of the man and the crime, I had no doubt that he was of unsound mind. The Judge opposed strongly attempts to get my opinion, believing the common sense of a jury to be the best judge of sanity. This is all very well if the facts are explained by one understanding their value, and not otherwise. That the patient knew he had killed his children, and that he knew he might be hanged, I could not deny, but knowledge of this kind does not exclude insanity.

I have patients of the most insanely dangerous class here who have said the same things which Gouldstone said, and who know as much as he does. Yet they are mad. William Gouldstone ought not to suffer without a careful, independent investigation of his history and the history of his crime, one not confined to an examination of twenty minutes or half an hour.

I am, yours truly,

Geo. H. Savage.

Bethlem Hospital, Sept. 17.

The Foreman of the jury published a card in the *Daily Telegraph* in which he stated: "The judge presiding at the Gouldstone trial told us (the jury) that the law regarding insanity was this:

"That if a person was proved to be of sound mind up to the time of committing a certain deed; *if he knew the nature of that deed and the penalty it involved;* and if after this he still appeared of sound mind, we are bound, according to this law, to say such a person was not insane." The report of the trial I take from the *Times*, and it is doubtless more exact as to the charge of the judge than the statement of the foreman of the jury in his published card.

Mr. William Tallack, of the London Howard Association,

published a card in the *Times*, from which we make the following extract:

To the Editor of *The Times*:

* * * * * *

Sir,—There is one department of the law, that affecting homicidal crime, where a peculiar obscurity, or rather conflict, exists, at least in many instances; where the letter of the law, though plain, is in clear collision with the consensus of the best scientific medical observation also, and therefore with equity and justice. The case of the Walthamstow murderer, now under sentence of death, affords an illustration. It was unmistakable, from the evidence at the trial, and, indeed, from the prisoner's own admission, that he well knew the nature of the act he was committing. Hence, too, that act is, plainly and legally, "wilful murder." But, from the testimony of the physician of Bethlem Hospital and others, it is similarly obvious that, notwithstanding this, the condition of the man's mind was, to say the least of it, very abnormal and doubtful.

And in so far as this may be the case, it is appropriate to bear in mind the very important resolution unanimously adopted at the annual meeting of the Association of Medical Officers of Asylums and Hospitals for the Insane, held at the Royal College of Physicians, London, on July 14, 1864, as follows:—

"That so much of the legal test of the mental condition of an alleged criminal lunatic as renders him a responsible agent, because he knows the difference between right and wrong, is inconsistent with the fact, well-known to every member of this meeting, that the power of distinguishing between right and wrong exists very frequently among those who are undoubtedly insane and is often associated with dangerous and uncontrollable delusions."

Such a resolution as the above by such a body is a virtual condemnation of the law by the responsible official exponents of modern medical science. And this, taken in connection with a series of Home Office precedents for interposition, constitutes a valid reason for expecting the Home Secretary, in such a case as the present one, to seriously reconsider the sentence.

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Yours truly,

William Tallack.

Howard Association, London, Sept. 17.

Dr. N. Wood, St. Luke's Hospital, published a card in the *Times*, from which I make the following extract:

To the Editor of *The Times*:

* * * * * *

Sir,—In any other case than murder an irrational act is accepted as

ground at least for suspicion that the mind of the perpetrator is disordered; but in cases of murder no account is taken of the unreason of the act. The fact that a man of good character, under the influence of a cause, or causes, held to be utterly inadequate by persons of sound mind, suddenly commits an act inconsistent with all his previous history, is in any other event than the perpetration of murder regarded as a very serious symptom, arousing the most anxious fears on the part of his friends, especially if he has insane relations; but the law ignores all this, and asserts that a man is responsible for his actions if he knows the nature and quality of the act he commits, and that it is forbidden by law. This standard of responsibility is directly opposed to the established judgment of every person who has had any experience of the disordered mind. I sympathize with Dr. Savage as to his sense of duty as a recognized authority in such a matter, impelling him to make a public appeal for some further investigation of the circumstances. I agree with him that the act of William Gouldstone, taking into account the whole history, was an insane act, and none the less so because on every other subject his conduct and conversation was rational.

I am, Sir, your obedient servant,

W. Wood, M.D.,

Physician to St. Luke's Hospital.

No. 99 Harley street, Sept. 17.

Dr. Savage publishes in the January number, 1884, of the *Journal of Mental Science*, of which he is one of the editors, over his own name, a review of the case, from which I make the following quotations:

I would, then, sum up the case in this way. A man with strong direct inheritance of insanity is reduced by bad feeding, pain, and worry, to a condition of misery that was diseased. It was melancholia out of relation to its causes and its end. The whole thing was—as is general in mental disorder—a morbid development, not a devilish afflatus.

As to my examination in Court, I can only say that the skill of the prosecuting counsel and the ruling of the Judge made my opinion appear to be that the prisoner was responsible. I could only say "yes" when asked if the man knew he had killed—I objected to the term "murdered"—his children, and again I could only say "yes" when asked if he knew the punishment he had incurred. It would have been folly, as well as false, for me to have said otherwise.

But I distinctly added that I believed him to be insane at the time the act was committed. One most important point was made out of the fact that I said that I could not certify from facts observed by myself in my interview of from twenty minutes to half-an-hour.

I have been blamed for this, but I would defend myself by saying that

counsel strictly bound me down to answer simply and solely as to facts observed by myself. Some say that, as a physician, I was bound to take the history and the antecedent facts as part of the facts observed. This I must demur to, as in the signing of a certificate the facts observed by myself must be quite independent of information gained from others. I own this is often a foolish necessity of the law, but at present it exists. I did add that with the history and from the facts I believed him to be insane, but I was told by the Judge that this was not for me, but for the jury to decide. And the Judge's ruling quite outweighted my opinion.

Surely the jury have a right to be instructed by experts as well as by lawyers. Insanity and its various forms are not less difficult to understand than forms of law.

It would have been better that there should have been a contest of medical opinion, so that the jury should have heard the points for and against the insanity, rather than they should be wholly uninformed. It may seem strange that medical opinions should differ as they are seen to do in contested trials; but I for one do not see in this difference of opinion untruth or dishonor. Medical knowledge is not as yet finite, and there are at least two sides to a shield.

I would suggest that, in any criminal case in which the medical officer of the House of Detention states any doubt about the sanity of a prisoner, the trial should not take place till several months' observation have transpired; thus a great deal of heart-burning would be saved, and some lunatics would not be tried as criminals.

Lastly, as to the test of sanity.

I fear the want of any exact knowledge of the causes of insanity must for very long leave us without any definition of the condition.

The lawyer will say, "Let common sense decide who are responsible, and what is to be meant by responsibility."

I know the most important safeguards are needed by society, so that the weak should be kept from becoming wicked, but at the same time I must protest against persons being punished for what they cannot help.

First, I would do away with all definitions of responsibility, and let each case be tried on its own merits. For just as a man is sane or insane in relation to his past history and to his surroundings, and not according to any standard that can be set up, so a man is responsible or not for his acts, according as they are the natural outcome of his uncurbed passions or are due to diseased conditions.

I grant that harm has been done in several ways by the medical expert, in too often and too indiscriminately dragging in such rare explanations as insane impulses alone.

Again, insanity is generally looked upon as like other acute diseases, which can be as readily diagnosed as fevers or heart disease.

It will not be understood in its criminal relationship till it is looked upon merely as the morbid life-growth from the diseased germ. The whole life has tended to irregularity, and in many, direct insane inheritance must be admitted to play a chief part in its production.

The subject is unsatisfactory, as may at once be seen from the different ways it is viewed by the public.

The suicide is always considered to be insane.

The testator, again, is practically considered sane, but it may be shown that he was insane without incurring odium.

But if a criminal is defended as insane, his defender runs a great chance of being looked at as criminal also.

Finally, are we to be bound by any definitions in giving our opinion? I should say "No." We have got rid of "delusions" as a necessary part of insanity. It is now, moreover, admitted that a "knowledge of right and wrong" is not necessary, and the question of loss of self-control and impulses is so delicate a one as to make it dangerous for an expert to attach much weight to it in giving evidence.

I am free to admit the fault lies in great part in our defective knowledge, but is also partly due to the habits of the law in exacting definitions from medical witnesses.

We can no more define insanity than we can by definition give an impression of a rainbow or a landscape.

GEO. H. SAVAGE.

THE CASE OF JAMES COLE.—He was indicted for the murder of his own child, aged three years and eight months, in August, 1883. The trial was held in the Central Criminal Court of London, October 18th, 1883, before Mr. Justice Denman.

I give the following account of that trial, taken from the *Journal of Mental Science* for January, 1884:

James Cole, 37, laborer, was indicted for the wilful murder of Thomas Cole.

In August he was living with his wife at Croydon. Their two children, Richard, aged 14, and Thomas, three years eight months, also lived with them. Prisoner had been out of work for some time. On the evening of the 18th he took the child Thomas by the legs and knocked its head against the floor and walls. As the prisoner ran away he said to a man he met—"I have murdered my child."

It was elicited from the boy Richard that upon the night in question, the prisoner complained that his wife had hidden people under the floor and in the cupboard to try to poison him. He was jealous of his wife, but no ground for this suspicion appeared.

The plea of insanity was set up.

The surgeon and chief warder of Clerkenwell House of Detention gave evidence that the prisoner had displayed no symptoms of insanity, but had con-

ducted himself in accordance with the prison regulations. On one occasion he became violent, but it was stated that it did not arise from unsoundness of mind.

For the defense, a brother of the prisoner was examined, and stated that some members of the family had been subject to fits.

Dr. Jackson, an alderman of Croydon, said he was quite certain that he was a typical lunatic, with dangerous delusions. In cross-examination, witness said the prisoner seemed to understand the questions put to him, and gave perfectly rational answers. He told him that he thought he was being poisoned, that his wife had set men on to him, that he used to shriek out and wake up at night thinking that people were murdering him. The prisoner acknowledged that he drank occasionally, and that he had been many times in prison for violence. The prisoner said he found a little drink made him lose his senses. The prisoner knew perfectly well that he was on his trial for murder. When asked how he could have treated his child so cruelly, he made no answer. In re-examination, Dr. Jackson said he believed the prisoner was in such a state of mind that no parish doctor ought to allow him to be at large, as he was dangerous.

Mr. Geoghegan, in defence, argued that there had been no motive for the commission of the crime, but that there were strong antecedent probabilities that the prisoner was so unsound in his mind at the time that he did not know the nature and quality of the act he was committing.

Mr. Poland said that the prisoner's belief that attempts had been made to poison him would not be sufficient for any medical man to certify that he was insane, and thus necessitate his confinement in an asylum. It was for the jury to say whether the prisoner was a violent drunken man or an insane person fit for Broadmoor.

Mr. Justice Denman said it was an appalling case. As to the plea of insanity, the law as laid down by the House of Lords was, that every man was supposed to be responsible for his acts until the contrary was proved, and it must be shown that he was suffering from such a state of mental disease as not to know the nature and quality of the act he was committing, or that it was wrong. The Judge referred to the new Act regarding the treatment of persons alleged to be insane, and said that he observed that last session a learned colleague expressed dissatisfaction with the new enactment, in which, however, he was not inclined to disagree, the new Act not altering the law as to insanity as it previously stood, but only making a difference as to the formal verdict.

The jury found the prisoner *Guilty*.

The Judge, in sentencing the prisoner to death, said the learned counsel had attempted to make out that he was not responsible. The attempt had failed, and he must express his opinion that, according to the law of England, it had rightly failed. "Although it was, I think, established in evidence that you had been suffering from delusions, I cannot entertain a doubt that on the occasion on which you violently caused the death of your child,

you know you were doing wrong, and knew that you acted contrary to the law of this country, and that you did it under the influence of passion, which had got possession of your mind from want of sufficient control, the result being that the poor child came by a sudden and savage death."

The Home Secretary, Sir Wm. Harcourt, ordered a medical examination also in the case of Cole, and Dr. Orange and Dr. Glover, who conducted it, pronounced him unquestionably insane, and he was reprieved.

Dr. D. Hack Tuke, in a forcible criticism of both these cases of Gouldstone and Cole, in the January number of 1884 of the *Journal of Mental Science*, of which he is editor, says over his own name:

It would be difficult indeed to conceive any circumstances more calculated to bring English Criminal Law into contempt than the results of the trials of Gouldstone and Cole for wilful murder. Our only consolation is that such pitiful exhibitions of the working of our present judicial machinery, in cases in which the plea of insanity is set up, may lead to some practical reform therein. Had any commentary been desired on the necessity of carrying out the Resolution* passed at the recent Annual Meeting of our Association, under the presidency of Dr Orange, and again at the October meeting of the Metropolitan Branch of the British Medical Association, such commentary, written in letters of blood, has indeed been supplied by the occurrence of these two trials in rapid succession.

The great object of this Resolution is to secure a full and deliberate examination of the accused before, instead of after his trial, by competent medical men. In the cases of Gouldstone and Cole, the result to them, it is true, would have been the same, but with how much greater propriety, dignity, and economy! We should have been spared the spectacle of judges solemnly condemning to death, and clearly indicating it to be their opinion that it was a just death, men who were lunatics. * * * * Had

* "That prisoners suspected of being mentally deranged should be examined by competent medical men as soon after the commission of the crime with which they are charged as possible, and that the examination should be provided for by the Treasury, in a manner similar to that in which counsel for the prosecution is provided. It is suggested that the examiners should be the medical officer of the prison, the medical officer of the County Asylum or Hospital for the Insane in the neighborhood, and a medical practitioner of standing in the town where the prison is situated; that the three medical men shall, *after consulting together*, draw up a *joint* report, to be given to the prosecuting counsel, the cost being borne by the public purse, inasmuch as it is useless to tell an insane man that the burden of proving himself insane lies upon himself." (See Journal of Mental Science. Oct., 1883, p. 451).

the deliberate examination we urge been made in the case of Gouldstone, instead of one of some twenty minutes at the eleventh hour (the deed was committed at least five months before), the man's mental condition could have been carefully tested without haste ; and in the case of Cole, the same course would have exposed his insane condition for years previously, and all the facts bearing upon it would have been procured at leisure. Important in such a case, also, is the circumstance that his wife could not give evidence in court, while her intimate knowledge of his history would have been of the highest value to a medical commission. Again, the law requires a man in such instances to prove himself a lunatic ; but is not this a mockery of justice? How can a poor prisoner afford to pay? Counsel may, indeed, be assigned to defend the prisoner too poor to pay, but this is at the last moment, and what possible chance has he of doing justice to his client? None ; for it is then too late to make a skilled inquiry into and study of the facts of most value in the determination of the prisoner's insanity. The effect of this Resolution would be to prevent a repetition of circumstances that make the interference of the Home Secretary imperative ; for, we repeat, it cannot be other than prejudicial to the respect that we should always wish to see entertained for courts of law, to go on continually convicting and sentencing lunatics to the gallows, and then reprieving them—a game which may be all very well for cats and mice, but is scarcely worthy of being engaged in by those who uphold and those who break the law.

Nor are these trials less remarkable as commentaries upon the proper mode of understanding and interpreting the legal test of insanity to which, truth to say, we are almost weary of referring. As those who have read Mr. Justice Stephen's work on Criminal Law, reviewed in this Journal in July last, are well aware, he reads between the lines of the *dicta* of the Judges of 1843, and charms his psychological readers with the conclusion that the knowledge of right and wrong does not merely refer to the law of the land, but involves the question whether the accused was able to judge of the moral character of the act at the time he committed it, not merely in an abstract sense, but for himself, under the special circumstances of his own delusion or loss of control.

So liberal a construction of the test seemed to open the way to a sort of compromise between medical and legal opinions. Now, what from this point of view is so noteworthy, is that neither of the Judges who presided over these trials (Mr. Justice Day and Mr. Justice Denman) appear to have had the faintest idea of such an interpretation of the terms. On the contrary, they obviously understood them in the baldest, most literal manner possible, but not otherwise, we are bound to say, than we supposed that they would understand them. Thus, Mr. Justice Denman, in addressing Cole, told him he could not doubt that he knew he was doing wrong. "You knew," he added, by way of explanation, "that you acted contrary to the law of this country." Whatever loss of control there might be was due to "passion." His lordship did not, with Sir James Stephen, say that any

one would fall within the description of not knowing he was doing wrong "who was deprived by disease affecting the mind of the power of passing a rational judgment *on the moral character* of the act which he meant to do" ("Criminal Law," vol. ii., p. 163). Nor did he tell the jury that the law when properly construed allows that "*a man who, by reason of mental disease, is prevented from controlling his own conduct, is not responsible for what he does*" (p. 167); nor yet that if a man's succession of insane thoughts is so rapid as to confuse him and render him unequal to the effort of calm sustained thought, "*he cannot be said to know, or have a capacity of knowing, that the act which he proposes to do is wrong*" (*Op. cit.*). That such is, after all, the proper way of understanding the *dicta* of the Judges was equally foreign to the mind of Mr. Justice Day. The Judges succeeded also in conveying to the juries the impression that they must take the meaning of the terms in question in the sense in which they have been hitherto understood. All we have to say on this aspect of the matter is, that either official sanction must be given to the interpretation of Mr. Justice Stephen, or the words themselves must be so altered as to make their meaning plain to jurymen, and not only to them but to the Judges themselves. The difficulty, however, presents itself that, not only do most Judges lay down the law in the old-fashioned sense, but they do not conceal their sympathy with this interpretation, and they would regard it as a subterfuge were a medical witness to reply—"Yes," in the sense attached to the words by Sir James Stephen to the question—"Did the prisoner know that he was doing wrong?" In Gouldstone's case, for instance, Dr. Savage felt that to do so would be an evasion of the real meaning attached by the court to the expression, and unworthy of a scientific witness.

Another point to which one of these cases forcibly calls attention, is the neglect of the obvious symptoms of insanity in a man from whom homicidal acts might have at any time been expected. From what has transpired during and since his trial, we find that Cole was in good work up to 1877, and attentive to his wife and children; that then he fell out of work, left home to seek it, and was found by the police, who took him to the Croydon workhouse infirmary as a wandering lunatic. When his wife went to see him he looked ill and strange, and did not know her; he thought she was dead, and that he was there for killing her. Unfortunately, instead of being placed under proper medical treatment in an asylum, he was allowed to go home in a week's time, and frightened his wife by his mad actions, nailing down the windows, &c., and placing a large knife under his pillow. The insane suspicions which marked his case then have never left him, and the wife had to earn a living by caning chairs, which he would sometimes smash to pieces, the reason assigned being that she was electrifying him. At night he was sleepless, and would walk the room, hearing imaginary noises, and declaring that strange men were concealed in the house. A medical man saw him in 1879, and said he was dangerous, that everything must be kept out of his way, and that he couldn't understand why he had been allowed to go home from the workhouse instead of being

sent to an asylum. So he went on fancying when in the house that his wife was trying to poison him, and when out of it that people were watching him in the street, and even assaulting them on this ground. His wife expected that he would commit some violent act, and that she would probably be the victim, but she does not appear to have thought he would injure their child, of whom he was very fond. The poor woman applied to the magistrates, but they comforted her by telling her that they could do nothing till he had committed some act. They referred her, however, to the relieving officer, and in consequence the parish doctor examined Cole, and gave her a certificate on which he was removed to the infirmary. Here was a second opportunity for doing something, taking care of the lunatic, and averting a dreadful catastrophe. But in vain. He was sent out in two days as mad as ever, and his wife, in mortal fear, called in the doctor, and he attended him at home. Soon after the man killed his child. All the day he had been walking about the house with a hammer and chisel, following his wife, who eventually managed to take them from him and conceal them. The wife at last went for a policeman, and when at the gate heard a noise in the house which induced her to return, when she found he had done the deed for which he was tried, and which we maintain might and ought to have been prevented by placing him in an asylum long before. This is the moral of the story. We have no desire to ignore the fact that Cole was an intemperate man. But we are satisfied that he was a sober man up to the time that he became insane in 1877, and that his giving way to drink was one of the symptoms of his madness, although doubtless a further aggravation of it. But while it may be impossible to gauge with precision his moral responsibility in relation to the intensity and continuance of his mental disorder, proof is not wanting that he had been sober for at least a week before the fatal act was committed. In a word, this was not the result of drink, but the outcome of a long, lasting state of delusional insanity. Had he joined the Blue Ribbon Army for months before, his delusions and their logical development in violence would have been the same. Add to this, that in consequence of his inability to earn a livelihood through his mental infirmity, he was wretchedly poor, and his brain was consequently ill-nourished, and rendered more and more a prey to suspicion.

The conclusion, then, to which we earnestly draw attention, in the interests alike of the law, of life, and of the lunatic, is the necessity of reforming the mode of Legal Procedure in ascertaining the Mental Condition of Prisoners.

D. Hack Tuke.

The Case of Guiteau.—We are far enough removed from the excitement of that awful tragedy, which resulted in the death of the President of the United States, to agree (now that he has been executed and the post-mortem examination of his brain has been made and submitted to the scientific

world, imperfect as that examination was, when it could have been made most thorough in every respect and in minutest detail), that there at least existed a question as to his sanity and responsibility which should have been submitted to the most critical medical examination and tests in the power of our government to have made, by the best medical men in this country, outside and independent of the trial itself.

Provisions are made under the law of this State for examination into the mental condition of any person charged with crime, before the trial, or even after the indictment, which, if it results in finding the accused insane, avoids the necessity of a trial upon the indictment when found.

The code of criminal procedure of New York also provides for a proceeding to examine cases where insanity is alleged to have occured after conviction, as follows:

SEC. 496. If after a defendant has been sentenced to the punishment of death, there is reasonable ground to believe that he has become insane, the Sheriff of the county in which the conviction took place, with the concurrence of a Justice of the Supreme Court or the County Judge of the county, who may make an order to that effect, must impanel a jury of twelve persons of that county qualified to serve as jurors in a court of record to examine the question of the sanity of the defendant.

The Sheriff must give at least seven days' notice of the time and place of the meeting of the jury to the District Attorney of the county. § 108 of the code of civil procedure regulates the impaneling of such a jury and the proceedings, upon the inquisition, so far as it is applicable.

§ 497. District Attorney must attend and may produce witnesses by subpœna.

§ 498. The inquisition must be signed by jurors or sheriff. If it is found by the inquisition that the defendant is insane, the Sheriff must suspend execution of the warrant until he receives the warrant of the Governor directing that the defendant be executed.

§ 499. The Sheriff must transmit inquisition to Governor, who, as soon as defendant is restored to sanity, must issue a warrant for execution, pursuant to sentence, unless commuted or pardoned, and may meanwhile dispose of defendant. (Code Criminal Procedure, title x., chap. 1.)

If such a provision exists in the District of Columbia, where the homicide occurred, it was a remarkable fact that it was not invoked by either the counsel for the people or the prisoner; nor was such a suggestion acted upon by the Government after the conviction and sentence, although pressed by some of the leading alienists of the country, as well as by citizens of every class throughout the land, as due to the self-respect of the Government and people.

The next generation will be unable to understand why such an examination was not held, nor be able to appreciate the peculiarly delicate relation of the executive and his legal advisers to that trial, nor the almost universal clamor for the execution of Guiteau, which made such an inquisition apparently impracticable, if not practically impossible, at that time.

The charge of the judge in the case of Guiteau fairly stated the law, not quite as strong and broad as the English judges in the cases of Gouldstone and Cole, but substantially within the recognized rule, as it is now laid down in most of the American States.

No one can pretend for one moment to deny, that Guiteau fully understood the nature and quality of his act; nor that he was able to discriminate between right and wrong in regard thereto, and that he fully understood that it was a crime at law, and well knew the penalty which the law imposed.

If the legal test established by the English judges in 1843, or as laid down by Judges Day and Denman in cases of Gouldstone and Cole were to apply, the jury in Guiteau's case must, of course, convict.

In no case of insanity of the character of melancholia or

with suicidal tendencies, where the disease is not readily detected, nor in any case of obscure character, is it possible ever to claim that the insane prisoner does not both know and fully understand that the act is wrong as human standards are measured, and it must generally be conceded that he also well understands the nature and quality of the act and its penalty under the law.

How far is this a reliable test of responsibility? Have we not come now to the point where the legal gentlemen can unite with medical men, and call a halt upon the justice or propriety of this remaining longer the law of such cases?

Dr. Hack Tuke quotes that eminent name, Sir James Fitz-James Stephens, in his recent masterly work on criminal law; in which he speaks both as a jurist and as a student and expounder of the principles of English law.

Sir James has recently been called to the English bench. As a judge he must administer the law as he finds it. He must sustain the current and continue in the line of the English decisions. A judge is not a law-maker. He is an expounder and interpreter of the law, and Sir James is far more valuable as an author and writer in his admirable treatise, than he is as a Judge in his judicial decisions. Sir James treats of this interesting subject in Vol. 2, Chapter XIX., entitled "Relation of Madness to Crime," and his views are well worthy our serious consideration, from what has been called the legal position involved in this discussion.

The learned writer gives a digest of the English law as to insanity from his standpoint as follows:

No act is a crime if the person who does it is at the time when it is done, prevented [either by defective mental power or] by any disease affecting his mind—

(*a*) From knowing the nature and quality of his act, or

(*b*) From knowing that the act is wrong [or

(*c*) From controlling his own conduct, unless the absence of the power of control has been produced by his own default].

But an act may be a crime although the mind of the person who does it is affected by disease, if such disease does not, in fact, produce upon his mind one or other of the effects above-mentioned in reference to that act.

He comments upon the answers of the Judges in the McNaughten case, and holds that their authority is questionable, though he has followed them as a Judge, and concedes "*that when they are carefully considered they leave untouched the most difficult questions connected with the subject, and lay down propositions liable to be misunderstood;*" but he claims that they should be construed "*in a way that would satisfactorily dispose of all cases whatever.*"

He reduces the doubtful points to the single question "*Is madness to be regarded solely as a case of innocent ignorance or mistake, or is it also to be regarded as a disease, which may affect the emotions and the will in such a manner that the sufferer ought not to be punished for the acts which it causes him to do?*"

Again, Sir James claims that, yielding the point that the answers of Judges must be accepted, though of doubtful authority, "*the law allows that a man who by reason of mental disease is prevented from controlling his own conduct, is not responsible for what he does.*"

I have not space within the limits of such a paper to give this chapter, which is worthy of reprint, entire, but I give a few extracts which I regard very important in the pending discussion:

The position of Sir James Fitz-James Stephens may be defined or stated as follows:

The different legal authorities upon the subject have been right in holding that the mere existence of madness ought not to give excuse for crime, unless it produces, in fact, one or the other of certain consequences.

I also think that the principle which they have laid down will be found, when properly understood, to cover any case which ought to be covered by it.

But the terms in which it is expressed are too narrow, when taken in their most obvious and literal sense, and when the circumstances under which the principle was laid down are forgotten. Vol. 2, chapter xix., p. 125.

He says, p. 130 :—"What are sanity and insanity ?"

The answer is that sanity exists when the brain and the nervous system are in such a condition that the mental functions of feeling and emotion and willing can be performed in their regular and usual manner. Insanity means a state in which one or more of the above-named mental functions is performed in an abnormal manner, or not performed at all, by reason of some disease of the brain or nervous system.

In commenting on the answers of the Judges in the McNaughton case, says :

I am of the opinion that even if the answers given by the Judges in McNaughton's case are regarded as a binding declaration of the law of England ; that law as it stands is, that a man, who by reason of mental disease, is prevented from controlling his own conduct, is not responsible for what he does.

I also think that the existence of any insane delusion, impulse or other state which is commonly produced by madness, is a fact relevant to the question, whether or not he can control his conduct, and as such may be proved, and ought to be left to the jury, p. 169.

He continues :

The proposition, then, which I have to maintain and explain is that, if it is not, it ought to be the law of England that no act is a crime if the person who does it is, at the time when it is done, prevented, either by defective mental power, or by any disease affecting his mind, from controlling his own conduct, unless the absence of the power to control has been produced by his own default. * * * * * * *

No doubt there are cases in which madness interferes with the power of self-control, and so leaves the sufferer at the mercy of any temptation to which he may be exposed ; and if this can be shown to be the case, I think the sufferer ought to be excused (p. 168–70).

The difficulty is in properly defining the words "know" and "wrong." No narrow or forced construction should be given these words, but the wide and broad signification, which Sir James puts as follows :

Knowledge and power are the constituent elements of all voluntary action, and if either is seriously impaired the other is disabled. It is as true that a man who cannot control himself does not know the nature of his acts, as that a man who does not know the nature of his acts is incapable of self-control (p. 171).

Regarding the matter as one for the Legislature, I do not think that it is expedient a person unable to control his conduct should be the subject of legal punishment.

The fear of punishment can never prevent a man from contracting disease of the brain or prevent that disease from weakening his power of controlling his own action in the sense explained ; and whatever the law may declare, I suppose it will not be doubted that a man whose power of controlling his conduct is destroyed by disease, would not be regarded as morally blamable for his acts (p. 171).

Sir James justifies the punishment of madmen in certain cases—

Little or no loss is inflicted on either the madman himself or on the community by his execution.

It is indeed more difficult to say why a dangerous and incurable madman should not be painlessly put to death, as a measure of humanity, than to show why a man who being both mad and wicked, deliberately commits a crime as murder, should be executed as a murderer (p. 178).

I may observe that the principle that madmen ought, in some cases, to be punished, is proved by the practice of lunatic asylums (p. 181), and cites Dr. Maudsley (see Responsibility, p. 129).

I cite further :

The question, "What are the mental elements of responsibility?" is and must be a legal question. I believe that by the existing law of England these elements (so far as madness is concerned), are knowledge that an act is wrong and power to abstain from doing it ; and I think it is the province of Judges to declare and explain this to the jury.

I think it is the province of medical men to state, for the information of the court, such facts as experience has taught them, bearing upon the question, whether any form of madness affects, and in what manner, and to what extent it affects either of these elements of responsibility, and I see no reason why under the law as it stands, this division of labor should not be carried out (p. 183).

In 1874 Mr. Russell Gurny's bill, introduced before the English Parliament, proposing amendments of the law relating to homicide, contained a clause recognizing the loss

of self-control, the result of disease, as one of the causes of exemption from responsibility in these cases—and while the bill did not become a law it led to the appointment of a committee before whom Sir James Stephens was called to testify, who claimed that the law should plainly state and define responsibility, and provide exactly where it rested and where it did not.

This evidence of Sir James created a great sensation, and the committee took the evidence of the Lord Chief Justice (Cockburn) which in the light of this discussion I may be pardoned for quoting.

He said :

As the law, as expounded by the Judges in the House of Lords, now stands, it is only when mental disease produces incapacity to distinguish between right and wrong, that immunity from the penal consequences of crime is admitted. The present bill introduces a new element, the absence of the power of self-control.

I concur most cordially in the proposed alteration of the law, having been always strongly of opinion that, as the pathology of insanity abundantly establishes, there are forms of mental disease in which, though the patient is quite aware he is about to do wrong, the will becomes overpowered by the force of irresistible impulse ; the power of self-control when destroyed or suspended by mental disease becomes, I think, an essential element of (ir) responsibility.

Sir James Stephen proposes that a jury should be allowed to return three verdicts—(1) Guilty ; (2) Guilty, but the power of his self-control was diminished by insanity ; (3) Not Guilty, on the ground of insanity.

This proposal, while a decided step forward, is liable to objections, which are most forcibly presented by Dr. Hack Tuke in his review of Sir James' book. *(Journal of Mental Science,* July, 1883, pp. 267, 268.)

Dr. John C. Bucknill, in his admirable review of Sir James' book, criticises Sir James' definition of insanity as follows (MEDICO-LEGAL JOURNAL, Vol. 2, p. 190) :

But this is a medical definition, covering the slightest deviation from

mental health arising from hysteria or alcohol, from bile or gout. It includes states of feeling as sensation, which may not affect the mind. It includes abeyance of mental functions, which is not insanity; for, when the mental functions are not performed at all, there is no insanity.

It is clear from the context that this definition of insanity would include more than Mr. Justice Stephen could allow to be irresponsible; and no good is gained by thus analysing the mind, and detailing the results of the analysis, more or less complete, as functions which may be separately affected. I shall myself venture to make one more medico-legal definition of insanity. *Insanity is incapacitating weakness or derangement of mind caused by disease.* It seems to me to be practically useful and scientifically accurate to make a distinction between weakness and derangement of mind. It seems to me also that all insanity which is not weakness will fairly come under the head of derangement in its widest sense; for morbid states of the emotions derange the play of mind. But the all important term in the definition is, of course, the attribute which points to the want of power to do something. In criminal inquiries, it means incapability of abstaining from the criminal act. It means that condition of irresponsibility pointed to by Lord Bramwell in Dove's trial—Could he help it? It means that which has been much insisted upon by medical writers and great legal authorities, the loss of self-control. Lord Chief Justice Cockburn and Justice Stephen have both expressed the strongest opinion that this state of mind caused by insanity ought to remove responsibility.

And I am also inclined to agree with Dr. Bucknill that, notwithstanding the written views of both Sir James and Chief Justice Cockburn, the law of England to-day as administered is as laid down by the Judges in the McNaughten case, although quite agreeing with Sir James that its strict enforcement would lead to monstrous consequences in many instances.

The Provisions of the New York Penal Code lay down the law as follows:

Sec. 17. A person is presumed to be responsible for his acts. The burden of proving that he is irresponsible is upon the accused person, except as otherwise presented in this code.

Sec. 20. An act done by a person who is an idiot, imbecile, lunatic, insane or of unsound mind, is not a crime.

A person cannot be tried, sentenced to any punishment, or punished for any crime while he is in a state of idiocy, imbecility, insanity or lunacy, so as to be incapable of understanding the proceedings or making his defense.

SEC. 21. A person is not excused from criminal liability, as an idiot, imbecile, lunatic or insane person, or of unsound mind, except upon proof that at the time of committing the alleged criminal act he was laboring under such a defect of reason, as either.

1. Not to know the nature of the quality of the act he was doing ; or,
2. Not to know that the act was wrong.

SEC. 22. No act committed by a person, while in a state of voluntary intoxication, shall be deemed less criminal by reason of his having been in such condition. But wherever the actual existence of any particular purpose, motive, or intent, is a necessary element to constitute a particular species or degree of crime, the jury may take into consideration the fact that the accused was intoxicated at the time in determining the purpose, motive, or intent, with which he committed the act.

SEC. 23. A morbid propensity to commit prohibited acts, existing in the mind of a person who is not shown to have been incapable of knowing the wrongfulness of such acts, forms no defense to a prosecution therefor.

SEC. 3343, Chap. xxii. of Code of Civil Procedure, (Subdivison 15) defines lunacy as follows : "The words 'lunacy' and 'lunatic' embrace every description of unsoundness of mind, except 'idiocy.'"

These two Sections, 20 and 21, must be construed together, as in some respects they apparently conflict.

The first part of Section 20 leaves lunacy undecided and undefined. The latter part would seem to define it to apply to the accused when in a state so as to be incapable of understanding the proceeding or making his defense; but Section 21 is a re-statement of the rule in the McNaughten case :

"Laboring under such a defect of reason as either not to know the nature or the quality of the act he was doing, or not to know that the act was wrong."

It is a source of profound regret that Mr. David Dudley Field and his confreres in framing and submitting the Penal Code did not meet this issue, rather than to have re-stated their view of the existing English law.

The time has come when legislators must face this question upon its merits. The able and masterly manner in which Sir James discusses the question, the decisions in

many of the American States recognizing a different test for responsibility, call for a settled law both in England and America, which would be in accord with the principles of justice and commensurate with the civilization of our age.

I think legislators, as well as judges, who administer the law in both countries, must feel that the time has come to carefully consider this question, and to state the law of responsibility in this class of cases so clearly, as to remove the very just criticisms everywhere made upon the dicta of some of the judges.

There is no doubt whatever that the uncertainty of verdicts, is largely due to the popular conviction of the injustice of the law as it now exists, and as it is frequently construed by the courts.

I am not unconscious of the fact that some judges have decided against what may be called the views of the English judges in McNaughton case, as notably Judge Ladd, of New Hampshire, in the case of Jones (State *vs.* Jones, N. H., 388); Beardsly in People *vs.* Freeman (H. Denio, 27), and Judge Brewster of the Phila. Common Pleas in 1868, who held that the true test lies in the word "power."

"Has the defendant in a criminal case the power to distinguish right from wrong and the power to adhere to the right and avoid the wrong?" (Wharton and Stille, § 159).

Shaw, C. J., in Commonwealth *vs.* Rogers (Bennett and Heard, leading criminal cases, 2 Ed., pp. 96–97.)

Robertson, J., in the Kentucky Court of Appeals (Wharton and Stille, § 175). There is a judicial tendency in many of our States, to hold an accused irresponsible who acts under an uncontrollable impulse based upon an insane delusion, even though he fully understands the nature

and consequences of his act, and can discriminate between right and wrong, but the rule in this country and surely in England, is greatly affected and controlled by the action of the English judges in 1843.

By far the ablest assault upon the existing law from the legal side is that of the learned Sir James Stephens.

The admirable paper of Dr. John Charles Bucknill, read before this Society and appearing in the September number of the MEDICO-LEGAL JOURNAL, is a masterly presentation of the subject.

It is a legislative and not a judicial question, and must receive public attention commensurate with its great importance in the administration of criminal jurisprudence.